

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Settlement Agreement and Request for Waiver)
Of Section 1.935 of the Commission's Rules)
)
WWC License L.L.C.) File No. 0000959496
)
Alltel Communications of the Southwest) File No. 0000959430
Limited Partnership)
)
Commnet Wireless, LLC) File No. 0000922001
)
McElroy Electronics Corporation) File No. 0000913369
)
McElroy Electronics Corporation) File No. 0000959846
)
Smith Bagley, Inc.) File No. 0000960815
)
Phase II Unserved Area Applications)
For New Mexico 3 RSA (Catron))
Market No. 555, Block A)
)
AND)
)
WWC License L.L.C.) File No. 0000959387
Phase II Unserved Area Applications)
For New Mexico 6 RSA (Lincoln))
Market No. 558, Block A)

ORDER

Adopted: February 28, 2007

Released: February 28, 2007

By the Assistant Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we address the "Joint Request for Waiver, Approval of Settlement Agreement, Dismissal of Pleadings and Certain Applications, and Grant of Application" filed on February 8, 2007 (Joint Request), by Alltel Communications of the Southwest Limited Partnership (Alltel), Commnet Wireless, LLC (Commnet), McElroy Electronics Corporation (McElroy), Smith Bagley, Inc. (Smith Bagley), and WWC License, L.L.C. (WWC) (collectively, "Joint Parties" or "Parties").¹ The Joint Request seeks Commission approval of the Settlement Agreement that the Parties

¹ Joint Request for Waiver, Approval of Settlement Agreement, Dismissal of Pleadings and Certain Applications, and Grant of Application, filed by Alltel Communications of the Southwest Limited Partnership, Commnet Wireless, LLC, McElroy Electronics Corporation, Smith Bagley, Inc., and WWC License, L.L.C. (Feb. 8, 2007).

have entered into to resolve certain long-standing issues regarding the pending above-captioned mutually exclusive Phase II cellular unserved area applications filed in the New Mexico 3 RSA (Catron). Upon approval of the Joint Request and Settlement Agreement, the Parties request dismissal of McElroy's pending Application for Review filed on March 10, 2005,² seeking review of an Order that the Mobility Division (Division) released on February 8, 2005 (*Division Order*),³ as well as the responsive pleadings to that Application for Review. For the following reasons, we grant the Joint Request and approve the Settlement Agreement.

II. BACKGROUND

2. The Joint Parties filed the applications at issue in this proceeding in response to a Public Notice inviting interested parties to submit Phase II unserved area applications for the New Mexico 3 RSA⁴ after the Commission revoked the license granted to Alee Cellular Communications (Alee) for Station KNKN271.⁵ McElroy filed the first application on June 4, 2002, FCC File No. 0000913369, after which the Division released a public notice establishing a notice and cut-off period for filing competing applications.⁶ Commnet submitted its application, FCC File No. 0000922001, on June 12, 2002; Alltel filed its modification application, FCC File No. 0000959430, on July 11, 2002; WWC also filed its application, FCC File No. 0000959496, on July 11, 2002 (WWC NM3 Application); and Smith Bagley filed its competing application, FCC File No. 0000960815, on July 12, 2002, the last day of the notice and cut-off period.

3. All of the applications propose service coverage similar to that previously provided by Alee running in a north-to-south direction along Interstate-25. McElroy and WWC, however, also each proposed three additional sites in their initial applications, Magdalena, Datil, and Quemado, extending due west of the former Alee service area. The Magdalena site is the eastern-most site and the Quemado site is farthest west, with Datil located between the two. The underlying *Division Order* addressed issues stemming from these three proposed sites, and these issues are the subject of the pending appeal in this proceeding. Specifically, McElroy and WWC each proposed a site at the Datil, New Mexico location unaware that the site was in fact already licensed to Smith Bagley under Call Sign KNKR315.⁷

² Application for Review of McElroy Electronics Corporation, filed by McElroy Electronics Corporation (Mar. 10, 2005).

³ In re Applications of Smith-Bagley, Inc. & WWC License L.L.C., Phase II Cellular Unserved Area Applications For New Mexico 3 RSA (Catron), Market No. 555, Block A, *Order*, 20 FCC Rcd 2361, 2374 ¶ 31 (MD 2005).

⁴ Wireless Telecommunications Bureau Implements Revocation of Cellular Call Sign KNKN271 (NM3 RSA); Phase II Unserved Area Application Rules to be Applied, *Public Notice*, 17 FCC Rcd 10518 (2002).

⁵ In re Applications of ALGREG Cellular Engineering, *Memorandum Opinion and Order and Order on Reconsideration*, 14 FCC Rcd 18524 18533-35 (1999), *aff'd*, *Alee Cellular Communications v. FCC*, slip op., No. 99-1460 (D.C. Cir. Jan. 30, 2001), *reh'g denied*, (D.C. Cir. Apr. 5, 2001), *cert. denied*, (S. Ct. Oct. 9, 2001). A letter issued on May 30, 2002, implementing the Commission's revocation of the license granted to Alee Cellular Communications (Alee) for Station KNKN271 initiated this proceeding. Letter to Alee Cellular Communications from Katherine M. Harris, Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau (May 30, 2002).

⁶ The Division released the Public Notice on June 12, 2002, *Public Notice*, Report No. 1201 (June 12, 2002), establishing a cut-off deadline of July 12, 2002, for filing competing applications, 47 C.F.R. § 22.131(b)(3).

⁷ Smith Bagley is authorized to operate at a tower located approximately 9.7 miles northwest of Datil NM, at the location coordinates of 34-15-00.0 N, 107-57-17.0 W. McElroy and WWC proposed operations at the exact same location because at the time each Party filed their initial application, the Commission's Universal Licensing System showed the status for the license for Station KNKR315 as Terminated. Smith Bagley notified the Commission of the error on July 11, 2002. The licensing history that lead to McElroy and WWC including the proposals in their

(continued....)

4. McElroy discovered the error over the course of the notice and cut-off period and on July 11, 2002, the 29th day of the notice and cut-off period, amended its first-filed application to delete the proposed Datil site. Without the Datil site, the Quemado location also could not be included in the proposed CGSA in McElroy's initial application and it too was deleted. On the same day it amended its initial application, McElroy therefore separately filed a second Phase II unserved area application, FCC File No. 0000959846, for the Quemado site. Thus, McElroy has pending two mutually exclusive applications in this proceeding.

5. WWC's application, which initially proposed service at the Magdalena, Datil, and Quemado sites, shared the same defect as McElroy's initial application before it was amended to delete the Datil and Quemado sites. On July 25, 2002, the Division returned WWC's application directing WWC to demonstrate that its proposal would not cause unlawful interference to the Datil site authorized under Smith Bagley's license for Station KNKR315.⁸ On September 5, 2002, WWC amended its application to delete the Datil site, which left a gap in the service area proposed in WWC's initial application, resulting in a distinct CGSA for the proposed Quemado site. Rather than submitting a separate application for the Quemado site, WWC requested a waiver of Section 22.949(b)(3) of the Commission's Rules, which permits only one CGSA per application.⁹ On September 25, 2002, McElroy filed an informal objection to dismiss WWC's amended application as defective.¹⁰

6. On February 8, 2005, the Mobility Division released its Order addressing the issues raised by the applications that included proposed cell sites at Datil, New Mexico. The *Division Order*, in relevant part granted WWC's waiver request and accepted WWC's amended application, which included two separate CGSAs.¹¹ In response, McElroy filed its Application for Review, seeking review of the grant of WWC's request for waiver. On March 24, 2005, Commnet filed Comments on McElroy's Application for Review, asking the Commission to move forward to auction on the pending mutually exclusive applications without ruling on the Application for Review.¹² WWC filed its Opposition to

(...continued from previous page)

initial applications even though Smith Bagley was already licensed at the Datil site is outlined in the *Division Order*, 20 FCC Rcd at 2363, ¶¶ 5-6.

⁸ Letter to William J. Hackett, Western Wireless Corporation, from Michael A. Ferrante, Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division (July 25, 2002).

⁹ FCC File No. 0000959496, at Ex. 9, Request for Waiver of Section 22.949(b)(3) at 2. In the alternative, WWC requested a waiver of the filing date requirement set forth under Section 22.131(b) of the Commission's rules to allow it to file a separate application for the Quemado site. WWC also stated that if the Commission denied its alternative waiver requests, it would withdraw its proposed Quemado site. *Id.* at 3.

¹⁰ Petition to Dismiss or Deny of McElroy Electronics Corporation, filed by McElroy Electronics Corporation (Sept. 25, 2002).

¹¹ *Division Order*, 20 FCC Rcd at 2374 ¶ 31. On August 14, 2002, over a month after the close of the notice and cut-off window established by McElroy's first-filed application, Smith Bagley filed a separate Phase II unserved area application for a new cellular system at the Quemado site. FCC File No. 0000997158 (Aug. 14, 2002). Smith Bagley's second application was accepted for filing on August 21, 2002. *Public Notice*, Report No. 1263 (Aug. 21, 2002). According to Smith Bagley, it filed its Quemado application within the 30-day period established by McElroy's separately filed Quemado application, which was accepted for filing on July 17, 2002. On September 20, 2002, McElroy and WWC filed individual petitions to dismiss Smith Bagley's Quemado application as defective, arguing that Smith Bagley filed the application outside of the 30-day notice and cut-off window established by McElroy's first-filed application. The *Division Order* dismissed Smith Bagley's August 14, 2002 application for the Quemado site as defective. *Id.* at 2366-70, ¶¶ 11-19. That part of the decision was not appealed.

¹² Comments on Application for Review, filed by Commnet Wireless, LLC (Mar. 24, 2005).

McElroy's Application for Review on March 25, 2005,¹³ and McElroy filed its Reply both to Commnet's Comments and WWC's Opposition on April 4, 2005.¹⁴

7. Finally, while not addressed in the underlying proceeding, WWC filed an application, FCC File No. 0000959387, on July 11, 2002, to modify its Station KNKN217 located in the New Mexico 6 RSA (Lincoln) (WWC NM6 Application). WWC asserts in its application that the proposed service area, which overlaps into the New Mexico 3 RSA, is mutually exclusive with McElroy's first-filed application, FCC File No. 0000913369, and Commnet's application, File No. 0000922001.¹⁵

8. While the applications and pleadings remain pending in this proceeding, the Joint Parties have entered into a Settlement Agreement dated February 8, 2007, in an effort to resolve their differences. The Parties seek approval of the Settlement Agreement and grant of WWC's NM3 Application and NM6 Application. Upon approval of the Settlement Agreement, the Parties request dismissal of the remaining mutually exclusive applications, and the Application for Review and responsive pleadings.

III. DISCUSSION

9. The Commission codified certain policies in Section 1.935 of its rules for parties that file mutually exclusive applications and then enter into an agreement to resolve that mutual exclusivity by withdrawing or requesting dismissal of the applications, as well as parties that have filed pleadings against an application and then seek to withdraw or request dismissal of the pleading in exchange for financial consideration.¹⁶ Those parties that wish to withdraw or dismiss their applications, as well as those who wish to withdraw or dismiss their pleadings in exchange for financial consideration must first obtain the approval of the Commission.¹⁷ The rule section further provides that parties withdrawing or requesting dismissal of their applications or pleadings must submit to the Commission a request for approval of the withdrawal or dismissal, a copy of the written agreement, and an affidavit setting forth a certification that the parties have not received any money or consideration in excess of the legitimate and prudent expenses incurred in preparing and prosecuting the application or pleading.¹⁸

10. The Joint Request complies with the rule section, but states that "[n]one of the Joint Parties nor their principals has paid or received, or will pay or receive, any consideration in exchange for the dismissal of applications or pleadings other than as set forth in the Settlement Agreement."¹⁹ The Request then "seeks waiver of the limitation on consideration in Section 1.935 (formerly Section 22.129) of the Commission's rules" ... "[i]n as much as the parties will receive monetary consideration under the Settlement Agreement to dismiss pleadings and ... applications."²⁰ The Request argues that grant of the

¹³ Opposition to Application for Review, filed by WWC License L.L.C. (Mar. 25, 2005).

¹⁴ Reply to Opposition, and Comments on, Application for Review, filed by McElroy Electronics Corporation (Apr. 4, 2005).

¹⁵ On August 31, 2005, WWC amended its NM3 Application to reflect that WWC had become a wholly owned, indirect subsidiary of Alltel Corporation as a consequence of the merger of Alltel Corporation and Western Wireless Corporation on August 1, 2005. Letter from Kenneth D. Patrich and Brian W. Higgins, Counsel for WWC License L.L.C. to Marlene H. Dortch, Secretary, FCC (Aug. 31, 2005). The same, however, has not been done for WWC's NM6 Application [IS THIS A PROBLEM?]. The Joint Request notes that Alltel Communications of the Southwest Limited Partnership is also a wholly owned, indirect subsidiary of Alltel Corporation. Joint Request at 1-2, n.1.

¹⁶ 47 C.F.R. § 1.935. The rules were formerly found in Section 22.129, *id.* § 22.129.

¹⁷ 47 C.F.R. § 1.935.

¹⁸ 47 C.F.R. § 1.935(a).

¹⁹ Joint Request at 4.

²⁰ Joint Request at 4-5.

waiver is consistent with Commission precedent where the Commission has waived portions of the settlement rule in an effort to resolve long-standing disputed licensing proceedings; and where it is evident that applications were not filed with the intent to secure payment for their withdrawal, and where resolution of the proceeding would enable service to be provided to consumers.²¹

11. We find that a limited waiver of Section 1.935 of the Commission's rules under the specific facts of this proceeding is warranted to the extent the rule limits settlement amounts because to do otherwise would not serve the underlying purpose of the rule.²² As the Commission explained in *Algreg Cellular Engineering*, Section 1.935 "reflects a balancing of our efforts to discourage the filing of speculative applications and pleadings designed solely to extract money from applicants, while still providing some incentive for legitimate petitioners and applicants to withdraw from proceedings and thus expedite service to the public."²³ We find no evidence that any of the Parties who filed applications or pleadings in this proceeding had any expectation of profiting from their filings. Rather, each Party filed competing applications within the notice and cut-off period established by McElroy's first-filed application in a timely manner. In the certifications attached to the Settlement Agreement, each Party states that its application was "filed in good faith fully with the intent to obtain the licenses and operate the stations, and were not filed with the intent to obtain a monetary settlement or other form of consideration." In terms of the petitions filed that resulted in the *Division Order*, several new and complex issues arose over Smith Bagley's licensed Datil site that the Parties litigated in good faith. The pleadings were filed in a timely manner, all raising legitimate issues rather than frivolous complaints in an attempt to abuse Commission processes.²⁴ Many of the same issues and some new are at issue in the

²¹ Joint Request at 5-7.

²² A waiver of the Commission's rules may be granted where the applicant demonstrates that (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative. 47 C.F.R. § 1.925(b)(3).

²³ In re Applications of Algreg Cellular Engineering For Facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A, in Market 307, Alabama 1 – Franklin, *Memorandum Opinion and Order and Order on Reconsideration*, 18 Communications Reg. (P&F) 301 (rel. Oct. 18, 1999) (*Algreg Cellular*). *Algreg Cellular* addresses former rule section 22.129, which was later recodified under Section 1.935. See in the Matter of Applications of California Water Service Company For Authority to Provide Multiple Address System Service in the States of California and Washington, *Memorandum Opinion and Order*, 18 FCC Rcd 11609, 11617-18, ¶17 (2003) (citing Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, *Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2686, ¶126 (1995)) (explaining the purpose of Section 1.935: "[t]his rule deters frivolous protests, filed primarily for anticompetitive or abusive reasons and prevents the filing of speculative applications and pleadings (or threats of the same) designed to extract money from applicants"); Wireless Telecommunications Bureau Waives Limitations on Payments in Settlement Agreements Among Parties in Contested Cases, *Public Notice*, DA 99-745 (Apr. 16, 1999) (citing Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, WT Docket No. 98-20, *Report and Order*, 13 FCC Rcd 21027 (1998) (explaining the purpose of Section 1.935: "[t]he rule is intended to decrease the potential for parties to abuse the Commission's processes by filing speculative applications and frivolous pleadings for the sole purpose of obtaining money and other consideration from other parties in exchange for withdrawing or seeking dismissal of applications and pleadings").

²⁴ For example, as discussed in footnote 11, *supra*, Smith Bagley filed a separate application for the Quemado site on August 14, 2002, over a month after the close of the notice and cut-off window established by McElroy's first-filed application, arguing that the application was timely filed within the 30-day period established by McElroy's separately filed Quemado application, which was accepted for filing on July 17, 2002. McElroy and WWC both filed petitions to deny against Smith Bagley's Quemado application and the *Division Order* rejected several arguments before dismissing Smith Bagley's application as filed in an untimely manner. Similarly, the *Division*

(continued....)

appeal pending in McElroy's Application for Review and WWC's Opposition to that filing. Grant of the Joint Parties' request for waiver would therefore serve the underlying purpose of the rule because it does not reward improper speculation or encourage the filing of abusive pleadings.²⁵

12. We also find that limited waiver of Section 1.935 is in the public interest because it would permit the resolution of a long-standing and litigious dispute among the Joint Parties and would expedite cellular service to consumers in New Mexico. The Parties filed their initial applications more than five years ago. The Wireless Telecommunications Bureau (Bureau) has found the length of a proceeding relevant, in part, in determining whether to grant a waiver of Section 1.935. In 1999, the Bureau issued a limited waiver during a settlement window allowing parties to resolve contested licensing proceedings, some of which were more than five years old, without limitation on the consideration promised, paid, or received.²⁶ In that proceeding, the Bureau found that granting a limited waiver of Section 1.935 would allow parties to resolve the disputes where the cost and delay of protracted litigation would further hamper the provision of wireless service to the public.²⁷ Similarly, a waiver would serve the public interest in the instant case by removing the uncertainty surrounding the applications at issue in this proceeding stemming from McElroy's Application for Review and the responsive pleadings and expedite service to the public.

13. We therefore waive the provisions of Section 1.935 of the Commission's rules that limit the consideration paid among parties to settlement agreements and approve the Joint Parties' Settlement Agreement. We further grant the Parties' requests to process WWC's NM3 and NM6 Applications, FCC File Nos. 0000959496 and 0000959387, and to dismiss McElroy's applications, FCC File Nos. 0000913369 and 0000959846, Commnet's application, FCC File No. 0000922001, Alltel's application, FCC File No. 0000959430, and Smith Bagley's application, FCC File No. 0000960815. In addition, we grant the Joint Parties' request to dismiss McElroy's Application for Review, Commnet's Comments, WWC's Opposition, and McElroy's Reply.

14. Finally, on November 25, 2002, Alltel filed an application, FCC File No. 0001102638, requesting approval to provide interim operating authority (IOA), to an area identical to that proposed in its July 11, 2002 Phase II cellular unserved application.²⁸ Commnet and McElroy jointly filed a petition

(...continued from previous page)

Order addressed several arguments, including the responsibility of applicants to know whether stations are in fact operational regardless of the status of the license in the Commission's Universal Licensing System database, before granting WWC's request of waiver of the Commission's rule limiting applications to one CGSA. Issues involving the grant of that waiver, including whether the Division improperly created a daisy chain effect by granting the waiver, remain pending because of the filing of McElroy's Application for Review.

²⁵ Cf. In the Matter of Zephyr Tele-Link, *Order*, 15 FCC Rcd 4247, 4248 ¶ 3, n.12 (CWD 2000) (declining to apply "the rule against 'greenmail' in this case, as there is nothing in the history of this proceeding to indicate that AALA's Petition to Deny Zephyr's application in the Oklahoma 4 – Nowata RSA was submitted for the purpose of extracting a settlement payment from Zephyr" (citing *Algrec Cellular Engineering*, FCC 99-281 (rel. Oct. 18, 1999)).

²⁶ Wireless Telecommunications Bureau Waives Limitations on Payments in Settlement Agreements Among Parties in Contested Cases, *Public Notice*, DA 99-745 (Apr. 16, 1999) (establishing 90-day period, effective upon publication of Public Notice in Federal Register); Waiver of Limitations on Payments in Settlement Agreements Among Parties in Contested Licensing Cases Expires on August 16, 1999, *Public Notice*, 14 FCC Rcd 7840 (WTB 1999); Wireless Telecommunications Bureau Extends Waiver of Limitations on Payments in Settlement Agreements Among Parties in Contested Licensing Cases, *Public Notice*, 14 FCC Rcd 13965 (WTB 1999)(extending settlement window to October 30, 1999).

²⁷ *Public Notice*, DA 99-745 at 1.

²⁸ FCC File No. 0001102638, filed by Alltel Communications of the Southwest Limited Partnership (Nov. 25, 2002).

to deny the IOA application on January 3, 2002,²⁹ and Alltel filed an opposition on January 16, 2002.³⁰ Similarly, on January 3, 2003, Smith Bagley filed an IOA application, FCC File No. 0001141871; and McElroy and Commnet jointly filed an IOA application, FCC File No. 0001141907. No petitions were filed against these two applications. The approval of the Settlement Agreement renders all three applications for IOA moot. We therefore dismiss the three applications as well as McElroy's and Commnet's joint petition to deny and Alltel's opposition as moot.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.331, 1.925 and 1.935 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, 1.935, the Joint Request for Waiver, Approval of Settlement Agreement, Dismissal of Pleadings and Certain Applications, and Grant of Application filed by Alltel Communications of the Southwest Limited Partnership, Commnet Wireless, LLC, McElroy Electronics Corporation, Smith Bagley, Inc., and WWC License, L.L.C. on February 8, 2007, is GRANTED.

16. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.331 and 1.935 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.935, the Application, File Numbers 0000959496 and 0000959387, filed by WWC License, L.L.C on July 11, 2002, be processed in accordance with Commission rules.

17. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.331 and 1.935 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.935, the Application, FCC File Nos. 0000913369 and 0000959846, filed by McElroy Electronics Corporation on June 4, 2002, and July 11, 2002, respectively; the Application, FCC File No. 0000922001, filed by Commnet Wireless, LLC on June 12, 2002; the Application, FCC File No. 0000959430, filed by Alltel of the Southwest Limited Partnership on July 11, 2002; and the Application, FCC File No. 0000960815, filed by Smith Bagley, Inc. on July 12, 2002, are DISMISSED.

18. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.331 and 1.935 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.935, the Application for Review filed by McElroy Electronics Corporation on March 10, 2005; the Comments on Application for Review filed by Commnet Wireless, LLC on March 24, 2005; the Opposition to Application for Review filed by WWC License L.L.C. on March 25, 2005; and the Reply to Opposition, and Comments on, Application for Review filed by McElroy Electronics Corporation on April 4, 2005, are DISMISSED.

19. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.331 and 1.934 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.934, the Application, FCC File No. 0001102638, filed by Alltel Communications of the Southwest Limited Partnership on November 25, 2002; the Application, FCC File No. 0001141871, filed by Smith Bagley, Inc. on January 3, 2003; the Application, FCC File No. 0001141907, filed by McElroy Electronics Corporation and Commnet Wireless, LLC Joint Venture on January 3, 2002; and the Petition to Dismiss or Deny filed by Commnet Capital, LLC and McElroy Electronics Corporation on January 3, 2002; and Opposition to Petition to Dismiss or Deny filed by

²⁹ Petition to Dismiss or Deny, filed by Commnet Capital, LLC and McElroy Electronics Corporation (Jan. 3, 2002).

³⁰ Opposition to Petition to Dismiss or Deny, filed by ALLTEL Communications of the Southwest Limited Partnership (Jan. 16, 2002).

ALLTEL Communications of the Southwest Limited Partnership on January 16, 2002, are DIMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Cyndi Thomas
Assistant Chief, Mobility Division
Wireless Telecommunications Bureau